

**REGULAR**

**NUMBER:** 271

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS TO ADD CHAPTER 20 TO TITLE V OF THE MILPITAS MUNICIPAL CODE REQUIRING THE CITY OF MILPITAS CREATE A PUBLIC ART POLICY, ESTABLISH A PUBLIC ART COMMITTEE AND DEDICATE CAPITAL IMPROVEMENT PROJECT FUNDS TO THE ACQUISITION AND INSTALLATION OF PUBLIC ARTWORK TO FURTHER THE PUBLIC ART POLICY

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of July 5, 2005, upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, 200\_, upon motion by Councilmember \_\_\_\_\_. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Steven T. Mattas, City Attorney

**ORDAINING CLAUSE:**

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

## Section 1.

The following Chapter shall be added to Title V of the Milpitas Municipal Code:

V-20-110: This Ordinance is being enacted as Title V, Chapter 20 of the Milpitas Municipal Code, titled, "The City of Milpitas Public Art Policy."

### V-20-210: Purpose

The City of Milpitas accepts responsibility for expanding opportunities for its citizens to experience public art. An ordinance designed specifically for Milpitas will ensure a public art program that enhances the quality of life in the community.

### V-20-310: Definition of Public Art

- a) "Public artwork" or "Public Art" means works of art that are meant to be enduring original artworks located on, affixed or applied to City property. They shall be of the highest quality and craftsmanship.
  - (1) Public Art shall be permanently sited and an integral part of the landscaping and/or architecture of a building considering the historical, geographical and social/cultural context of the site.
  - (2) Public Art shall be constructed to a scale that is proportional to the scale of the building or property it relates to or is sited upon.
  - (3) Public artwork may include sculpture, furnishings or fixtures, including but not limited to gates, walls, railings, streetlights or seating. Public Art may include water elements and walkways.
  - (4) Public artwork may include murals, photography and original works of graphic art, water features, neon, glass, mosaics, or any combination of forms of media, furnishings or fixtures permanently affixed to a building or its grounds, or a combination thereof, and may include architectural features of buildings.
  - (5) Public artwork shall be displayed in a manner that will enhance enjoyment by the general public.
  - (6) Public artwork may include artistic or aesthetic elements of the overall architecture or landscape design if created by a professional artist or design team that includes a professional visual artist.
  - (7) Public Art may include reproductions of original works of art.
- b) Public artwork does not include the following:
  - (1) Art objects that are mass-produced of standard design such as playground equipment, benches or fountains;
  - (2) Decorative or functional elements or architectural details of a building designed solely by the building architect, unless such decorative and functional elements or architectural details are artist commissioned, and designed in collaboration with the building's architect;
  - (3) Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist;

(4) Directional elements such as super graphics, signage, or color coding except where these elements are integral parts of the original work of art or executed by artists in unique or limited editions.

V-20-410: PUBLIC ART COMMITTEE

- a) The City of Milpitas and the Milpitas Redevelopment Agency shall establish a Public Art Committee.
- b) Membership: The Committee shall be composed of the members of the Milpitas Arts Commission, three (3) persons recommended by the Milpitas Alliance for the Arts or its successor non-profit organization and one (1) member of the general public with an art background or specifically identifiable involvement in the arts. Interested persons must submit a City of Milpitas Community Service Application and proceed through the City Council's appointment process.
- c) The Public Art Committee's recommendations shall be advisory to the City Council and the Redevelopment Agency.
- d) The Committee's primary task shall be to review and recommend the selection and placement of Public Artwork.
- e) All members of the Public Art Committee shall serve a three-year term and shall follow the established City of Milpitas guidelines for participation on a City commission.

V-20-510: PUBLIC ART PROGRAM MASTER PLAN

- a) The City of Milpitas and the Milpitas Redevelopment Agency shall jointly develop with input from the public and upon the review, advice and recommendation of the Public Art Committee a Public Art Program Master Plan. The Public Art Program Master Plan shall establish and guide the development and implementation of a Milpitas Public Art Policy.
- b) The Public Art Program Master Plan shall:
  - Survey opportunities throughout the City and the Redevelopment Agency District for suitable sites and areas for the placement of Public Art;
  - Provide advice as to the potential priority for Public Art installations;
  - Advise as to potential Public Artwork aesthetic themes;
  - Advise as to the appropriate cataloguing and maintenance of Public Artwork.
- c) The Public Art Committee shall recommend to the City Council the adoption of program guidelines, policies and procedures to ensure consistent administration of the Public Art Program.

V-20-610: PUBLIC ART FUND

- a) The City of Milpitas shall dedicate 1.5% of eligible projects expenditures within the City's annual Capital Improvement Projects to the acquisition and installation of Public Art. The categories of eligible projects shall be limited to the following: New Building Projects, Large Infrastructure Projects, CIP projects limited to Community Improvements, Selected Parks and Streets Projects.

- 1) To establish a significant initial fund, the City shall provide an additional \$125,000 per year to the Public Art Fund for the first four years of the Public Art Program Master Plan, effective Fiscal Year 05/06.
  - 2) Three years from the effective date of this ordinance, the City Council shall review a minimum eligibility threshold of \$1 million per CIP project for the funding of public artwork for the application of the 1.5% formula.
  - 3) In conjunction with the submission of the annual budget, the City Manager shall annually notify the Public Art Committee of which projects are eligible construction projects within the approved categories for the 1.5% formula application, as well as, expenditures for the prior year subject to the 1.5% funding.
- b) The Public Art Fund shall be used to further the intent and purpose of this Article and in the administration of the Public Art Policy.
- 1) Permitted expenditures of the Public Art Fund shall include, but are not limited to:
    - A) The cost of public art and its installation, which includes the hiring of artists to develop and design concepts for the selection, acquisition, purchase, commissioning, placement, installation, exhibition and/or display of artwork;
    - B) Water works, landscaping, lighting, plaques and other objects, which may be an integral part of the public artwork;
    - C) Frames, mats, pedestals and other objects necessary for the presentation of the public artwork;
    - D) Walls, pools, landscaping and other architectural or landscape architectural elements necessary for the proper aesthetic and structural placement of the public artwork;
    - E) Maintenance and repair of public artwork funded through the Public Art Fund;
    - F) Administration of the City's Public Art Program, including staff support and related expenses, transportation of Public Art, site preparation, permit or certificate fees, business and legal costs directly associated with specific Public Art projects, master planning, installation and maintenance of Public Art, curatorial services, documentation, publicity and community education. Administrative costs shall also include staff time, direct costs and administrative overhead.
    - G) Hiring of consultants on an as needed basis to advise and assist the Public Art Committee in such areas as professional appraisal of Public Artwork; packing and shipping of public artwork; conservation and maintenance; collection documentation; installation design; presentation assistance; contract negotiation; artist selection; program monitoring; on-site monitoring of public artwork installation.
    - (H) Reproductions of original works of art.

- 2) Monies appropriated under this section shall not be used for the following:
- A) Art objects, which are mass-produced of standard design such as playground equipment or fountains.
  - B) Decorative or functional elements which are designed by the building architect as opposed to a commissioned artist.
  - C) Landscape architecture and landscape gardening except where these elements are designed by the artist and are an integral part of the work of art by the artist.
- c) Nothing shall preclude gifts, grants, bequests, donations or other monies received by the City Council for art purposes from being placed in the Public Art Fund and used for the purposes expressed herein or for any other purpose as may be determined by the donor.
- d) Funds dedicated by the City or Redevelopment Agency shall be used to leverage additional private funds. The Public Art Committee shall aggressively seek to acquire additional funding for the Public Art Fund through donations, grants, sponsorships and all other appropriate fundraising means and opportunities. All additional funds received shall supplement Public Art Funds dedicated by the City and the Redevelopment Agency. The Public Art Committee shall prepare a semiannual report to the City Council updating the City Council on the Committee's fundraising efforts and goals.
- f) Contracts related to the Public Art Program shall be submitted to the City Council and/or Redevelopment Agency for approval.

V-20-710: PROGRAM EXPANSION

FY 2005/2006, the Public Art Committee shall evaluate and recommend to the City Council the potential extension of the public art program to the private sector.

V-20-810: SEVERABILITY

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

*(End of proposed Chapter)*

Section 2. Effective Date and Posting.

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance to be posted in at least three (3) public places in the City of Milpitas in accordance with Section 36933 of the Government Code of the State of California.

*(End of Ordinance)*